



PUBLIC NOTICE

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DA 04-1692
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WINDOW ANNOUNCED FOR NONCOMMERCIAL EDUCATIONAL FM SETTLEMENTS AND TECHNICAL AMENDMENTS

SETTLEMENT REIMBURSEMENT CAP WAIVED UNTIL AUGUST 13, 2004

The Media Bureau (“Bureau”) announces that it will accept settlements and certain technical amendments until August 13, 2004, for the closed groups of reserved channel, mutually exclusive noncommercial educational (“NCE”) FM station construction permit applications listed in Attachment A.

Background. On May 11, 2004, the United States Court of Appeals for the District of Columbia Circuit denied several petitions for review challenging the Commission’s revised NCE comparative selection standards in *American Family Association, Inc. et al. v. FCC*, No. 00-1310 (decided May 11, 2004).¹ The Attachment A applications are ready for processing under these standards. The Bureau has concluded, however, that it should provide this very large group of long-pending applications one additional and final settlement opportunity to resolve application conflicts prior to applying the new NCE selection rules.

The *NCE MO&O* directed the staff to waive the reimbursement limitations of Section 73.3525(a) of the Commission’s rules to facilitate settlements and the expeditious introduction of new NCE FM service.² Accordingly, the Commission will waive the reimbursement limitations of Section

¹ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket 95-31, *Notice of Proposed Rulemaking*, 10 FCC Rcd 2877 (1995); *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21167 (1998); *Report and Order*, 15 FCC Rcd 7386 (2000) (“*NCE Report and Order*”); *Memorandum Opinion and Order*, 16 FCC Rcd 5074 (2001) (“*NCE MO&O*”); *Second Report and Order*, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”). Petitions for reconsideration of the *NCE Second Report and Order* are pending with the Commission. See *Public Notice*, “*Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding*,” Report No. 2614 (rel. July 1, 2003).

² *NCE MO&O*, 16 FCC Rcd at 5107-08. See also *Public Notice*, “*Supplements and Settlements to Pending Closed Groups of Noncommercial Education Broadcast Applications Due by June 4, 2001*,” 16 FCC Rcd 6893 (MMB Mar. 22, 2001), extended by *Public Notice*, “*Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001*,” 16 FCC Rcd 10892 (MMB May 24, 2001).

73.3525(a)(3) for settlement agreements received at the Commission's Office of the Secretary on or before August 13, 2004. This settlement window will provide a last opportunity for these applicants to enter into settlement agreements that include reimbursement payments in excess of legitimate and prudent applicant expenses.

Settlement Agreements. The applicants listed in Attachment A may resolve technical conflicts through two methods: settlements and technical amendments. A settlement must propose the grant of at least one application within the listed "MX group." Universal settlements are encouraged but not required. Applicants are not required to satisfy the related certification and disclosure requirements of Sections 73.3525(a)(3), (4) and (5). Settling applicants must comply with the Commission's general settlement rules in all other respects.³ Applicants must submit a joint request for approval of settlement and a copy of the settlement agreement. Each applicant also must submit an affidavit that satisfies the requirements of Sections 73.3525(a)(1), (2) and (6).

Technical Amendments. An applicant listed in Attachment A may file a minor engineering amendment to resolve all technical conflicts to each of the other applications in the listed MX group. Applicants may file coordinated technical amendments as part of a settlement agreement and must cross-reference all such filings in each amendment. Amendments which create new application conflicts will be returned. Applicants are encouraged to file technical amendments promptly. These amendments will be processed under the NCE first-come, first-served cut-off rule.⁴

Filing Procedures. Joint requests for approval of settlement must be filed in original and two copies, plus one additional copy for each applicant that is a party to the settlement, on or before August 13, 2004, with the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. In addition, applicants may deliver a courtesy copy of the settlement agreement to Liz Robinson, Audio Division, Room 2-B450, 445 12th Street S.W., Washington, DC 20554. Applicants should reference the "MX group number" appearing in Attachment A and any application amendments filed in conjunction with each joint request. The Bureau will expedite the processing of all complete and rule-compliant settlement agreements and technical amendments.

All application amendments must be filed electronically via the Consolidated Database System online electronic forms filing system, located at the following site: <http://www.fcc.gov/mb/elecfile.html>.⁵ Applicants filing electronic amendments to applications that were originally filed on paper should follow the same electronic filing procedures, except that such applicants must first create a new account at the electronic filing site. For technical assistance with electronic filing, call the Media Bureau Help Desk at (202) 418-2MMB.

Contact: George Gwinn, Audio Division, Media Bureau 418-2700.

Adopted by the Chief, Media Bureau

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³ See 47 C.F.R. § 73.3525.

⁴ See 47 C.F.R. § 73.3573(e).

⁵ Amendments will not be accepted on paper or via email.